



AGENDA

ZONING BOARD OF APPEALS

Members

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

Date February 20, 2024
and 6:00 PM
Time:

Location: Community Room
 933 Michigan Avenue, Stevens Point, WI

OR

Zoom Teleconferencing

Meeting ID: 831 5205 4853

Passcode:240558

By Computer:

<https://us02web.zoom.us/j/83152054853?pwd=KOVMB014U3BjZzVuSU9>

By Phone: +1-312-626-6799 (US Chicago)

Discussion and Possible Action on:

1. Roll Call
2. Selection of a temporary chairperson for the February 20, 2024 meeting of the Zoning Board of Appeals.
3. Report of the August 29, 2022 meeting of the Zoning Board of Appeals.
4. Report of the November 9, 2022 meeting of the Zoning Board of Appeals.
5. Report of the March 7, 2023 meeting of the Zoning Board of Appeals.
6. A request from Sue McCartney & Leif Olson for an area variance to subdivide the property located at 618 Portage Street (Parcel ID 281240829301415), consistent with Ch. 23.05.
7. Move into closed session pursuant to Wisconsin Statutes 19.85(1)(a) (deliberation concerning a case which is the subject of any judicial or quasi-judicial trial or hearing before that governmental body) on the following:
 - A. A request from Sue McCartney & Leif Olson for an area variance to subdivide the

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.

property located at 618 Portage Street (Parcel ID 281240829301415), consistent with Ch. 23.05.

8. Return into open session for a decision on a request from Sue McCartney & Leif Olson for an area variance to subdivide the property located at 618 Portage Street (Parcel ID 281240829301415), consistent with Ch. 23.05.
9. Adjourn

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

**HELD ON
August 29, 2022**

A meeting of the Stevens Point Zoning Board of Appeals was called to order at 6:00 p.m. by Chair George Doxtator. In attendance at the meeting were Board of Appeals members George Doxtator, Gracia Day, Lynn Markham, Chris Tiffany, and Ismalia Odogba (virtually). Also in attendance were alternate Board members Tom Schrader and Stephen Klein. Also in attendance was legal counsel Dean Dietrich, the Applicant for the hearing (Andrea Olson), 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 June 7, 2022, meeting. A motion was made by Day and seconded by Tiffany 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 Andrea Olson (“Olson” or “Applicant”) for review of the Zoning Administrator decision as indicated in her application dated April 22, 2022. The Application addresses various concerns regarding complaints made about the business conducted by the Applicant and the operation of a home occupation at the residence at 410 Franklin Street. The essence of the Appeal is to challenge the decision of the Zoning Administrator that Olson was in violation of the Zoning Ordinance by operating a business at the residence that would not qualify as a home occupation business (which would be allowable under the Zoning Ordinance).

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. Legal counsel Dietrich also indicated that he had sent a communication to the Zoning Board members which included background information and legal analysis regarding home occupation uses under a zoning ordinance.

The hearing was then commenced with a presentation by the Applicant. The Applicant provided background regarding the operation of a business at the residence along with various exhibits and documents. The Applicant then concluded her presentation to the Board of Appeals with a request that the business be considered a home occupation under the Zoning Ordinance.

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 Olson was then given the opportunity to provide a closing statement to the Zoning Board of Appeals. Ms. Olson summarized the basis for the request for the review of the Zoning Administrator decision. City Attorney Beveridge was then given the opportunity to provide a closing statement 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 Day and seconded by Odogba to convene into closed session. A roll call vote was taken, and all Board members voted "YES." No Board members voted "NO."

The Board of Appeals then adjourned into closed session for deliberations at approximately 8:30 p.m.

The Zoning Board of Appeals adjourned from the closed session without reconvening into open session.

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

**HELD ON
November 9, 2022**

A meeting of the Stevens Point Zoning Board of Appeals was called to order at 6:00 p.m. by Acting Chair Lynn Markham. In attendance at the meeting were Board of Appeals members Gracia Day, Lynn Markham, Bob Woehr, Ismalia Odogba, Tom Schrader and Stephen Klein. Also in attendance was legal counsel Dean Dietrich. Various members of the public were in attendance including the Applicant and City Officials.

The first agenda item was a motion to convene into closed session pursuant to Section 19.85(1)(a) Wis. Stats. for the purpose of deliberating regarding the Application filed by Andrea Olson for review of the Zoning Administrator's decision that the business operating at the residence did not qualify as a home occupation business. A motion was made by Schrader and seconded by Day to adjourn into closed session. All Board members voted yes.

The Zoning Board of Appeals reconvened into open session at approximately 7:30 p.m. Legal counsel for the Board of Appeals announced the decision of the Zoning Board of Appeals and presented information to all parties in attendance. The Board of Appeals decided that the business operating at the residence did qualify as a home occupation business. The Zoning Board of Appeals agreed that the decision would be forwarded to the parties after it was finalized by legal counsel.

A motion was made by Day and seconded by Klein to adjourn. The meeting adjourned at approximately 8:05 p.m.

ZONING BOARD OF APPEALS REPORT

March 3, 2023 – 6:00 PM

Community Room – 933 Michigan Avenue, Stevens Point, WI 54481

PRESENT: Member George Doxtator, Member Gracia Day, Member Lynn Markham, Member Ismaila Odogba, Member Chris Tiffany, Member Tom Schrader, and Member Stephen Klein.

ALSO PRESENT: Zoning Administrator/Associate Planner Kuhn, City Attorney Beveridge, and any unidentified virtual audience members.

INDEX:

Discussion and Possible Action on:

1. Roll Call
2. A request from Jacob Hainzperger for an area variance to install an accessory structure within the required street setback on the property located at 3199 Dan's Drive (Parcel 281230804101201). Presentation by the City Attorney on the roles and responsibilities of the Zoning Board of Appeals.
3. Move into closed session pursuant to Wisconsin Statutes 19.85(1)(a) (deliberation concerning a case which is subject of any judicial or quasi-judicial trial or hearing before that governmental body) on the following:
 - A. A request from Jacob Hainzperger for an area variance to install an accessory structure within the required street setback on the property located at 3199 Dan's Drive (Parcel ID 281230804101201)
4. Return into open session for a decision on a request from Jacob Hainzperger for an area variance to install an accessory structure within the required street setback on the property located at 3199 Dan's Drive (Parcel ID 281230804101201).
5. Adjourn

Discussion and Possible Action on:

1. Roll Call

Chairperson Doxtator called the meeting to order at 6:00 PM, to which a quorum was present.

Present: Doxtator, Odogba, Markham, Tiffany, Schrader, Klein

Excused: Day

2. A request from Jacob Hainzperger for an area variance to install an accessory structure within the required street setback on the property located at 3199 Dan's Drive (Parcel 281230804101201).
 - Opening remarks from Attorney Beveridge regarding his role in advising the board and the procedure for the meeting.

- Comment from Board member Markham regarding the standard to be applied and asking the applicant to address those standards specifically.
 - Presentation from the applicant.
 - Questions from the Board to the applicant.
 - Presentation by Zoning Administrator Adam Kuhn.
 - Questions to Administrator Kuhn from the Board.
 - Additional questions to the applicant from the Board and statements by the applicant.
3. Move into closed session pursuant to Wisconsin Statutes 19.85(1)(a) (deliberation concerning a case which is subject of any judicial or quasi-judicial trial or hearing before that governmental body) on the following:
- a. A request from Jacob Hainzlperger for an area variance to install an accessory structure within the required street setback on the property located at 3199 Dan's Drive (Parcel ID 281230804101201)

Motion to enter closed session by Tiffany. Seconded by Schrader.

Roll call: Ayes: Doxtator, Odogba, Tiffany, Schrader, Klein

Nays: Markham

Motion passes.

Closed session entered into at 6:45p.m.

- **Discussion in closed session by the Board members regarding the applicable standards and whether they are met.**
 - **Motion by Markham to return to open session, seconded by Odogba: Ayes: All. Nays: None. Motion passes.**
4. Board re-enters open session at 7:07 PM.
5. Statement by Board member Markham regarding the standards for an area variance. Statement by the applicant regarding the authority of the Board to grant a variance. Comments by Administrator Kuhn and Board member Markam regarding enforcement.
6. **Motion by Markham to deny the variance request. Seconded by Doxtator. Ayes: All. Nays: None. Motion passes. The variance request is denied.**
7. Motion by Schrader to adjourn. Seconded by Odogba. Ayes: All. Nays: None.

Meeting adjourned at 7:11 PM.

Administrative Staff Report

**Area Variance
Subdivide Parcel
618 Portage Street
February 20, 2024**



**Department of Community
Development**

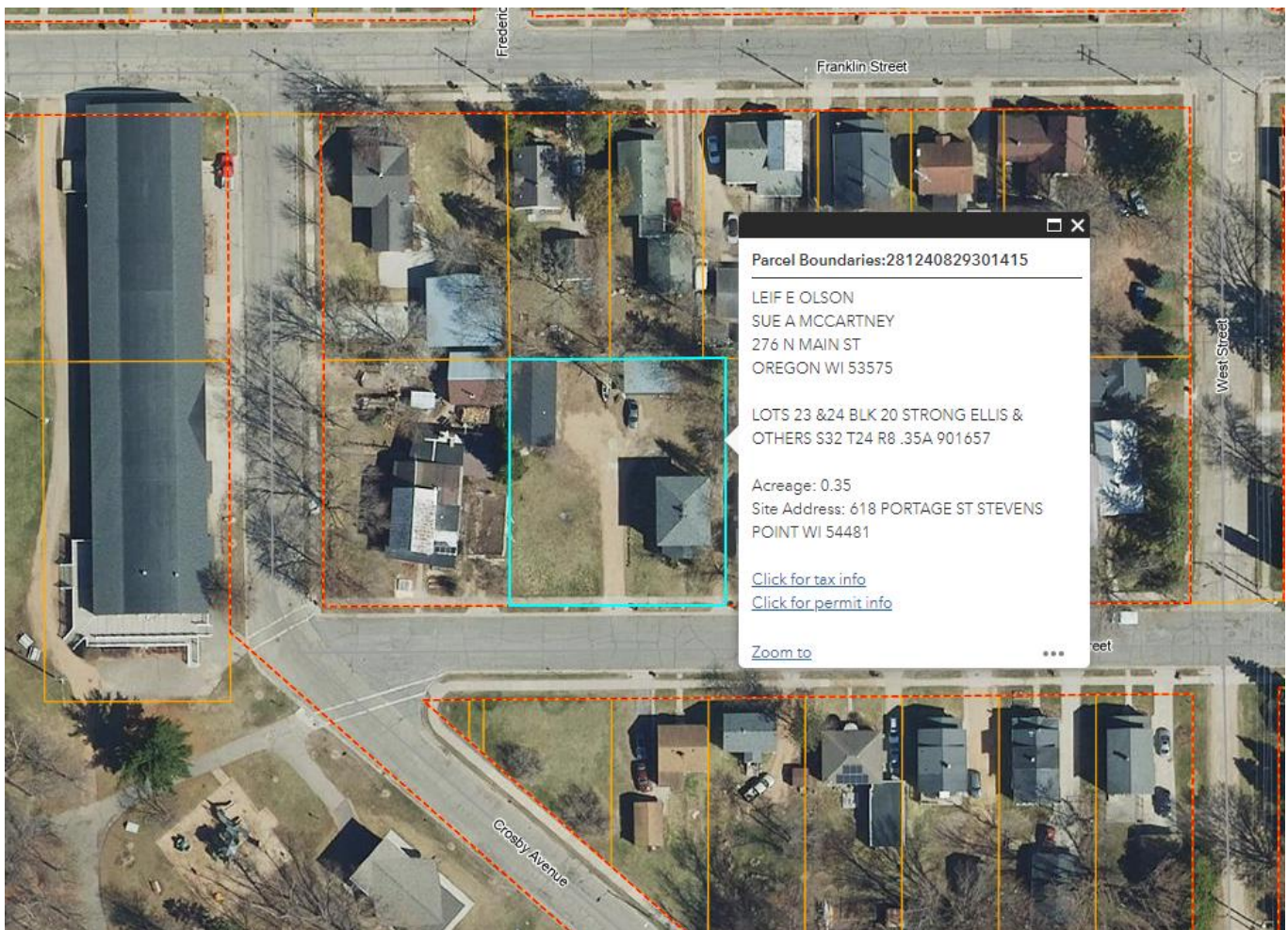
| | |
|---|---|
| <p>Applicant(s):</p> <ul style="list-style-type: none"> Sue McCartney & Leif Olson <p>Staff:</p> <ul style="list-style-type: none"> Adam Kuhn, Associate Planner akuhn@stevenspoint.com <p>Parcel Number(s):</p> <ul style="list-style-type: none"> 281240829301415 <p>Zone(s):</p> <ul style="list-style-type: none"> Split-zoned (“R-4” Multiple Family I Residence District and “R-5” Multiple Family II Residence District) <p>Master Plan:</p> <ul style="list-style-type: none"> Split Designation (‘Multi-Family Residential’ and ‘Residential’) <p>Council District:</p> <ul style="list-style-type: none"> District 4 Ald. Broderick <p>Lot Information:</p> <ul style="list-style-type: none"> Frontage: 117 ft. Depth: 132 ft. Lot Size: 15,444 sq. ft. (0.35 ac.) <p>Current Use:</p> <ul style="list-style-type: none"> Two-Family Residence <p>Applicable Regulations:</p> <ul style="list-style-type: none"> 23.05 | <p>Request</p> <ol style="list-style-type: none"> A request from Sue McCartney & Leif Olson for an area variance to subdivide the property located at 618 Portage Street (Parcel ID 281240829301415), consistent with Ch. 23.05. <p>Attachment(s)</p> <ol style="list-style-type: none"> Application <p>Findings of Fact</p> <ol style="list-style-type: none"> The subject property, 618 Portage Street, is split-zoned. The west half of the subject parcel has a “R-4” Multiple Family I Residential zoning designation, while the east half of the subject parcel has a “R-5” Multiple Family II Residential zoning designation. A duplex exists on the east half of the subject parcel. On the west half of the subject parcel, a triplex used to exist but was razed in 2008 as a result of a fire. While this structure was built as a triplex, it was last used as a duplex prior to the fire. The triplex was classified as a legal nonconforming structure with respect to setback requirements, while the use was classified as legal nonconforming. Typically, nonconforming structures that are razed lose their grandfathered status and would be required to meet current Zoning Code requirements as part of a new build. However, State Statute 61.351(5m) allows nonconforming structures to be rebuilt if it was damaged or destroyed after March 2, 2006 due to a fire. Prior to 2014, the triplex and duplex were located on different parcels. In 2014, both parcels were combined. While the applicant would be permitted by State Statutes to rebuild this nonconforming structure, a conditional use permit would be required. The Common Council would have grounds to deny this conditional use request as minimum lot size requirements (16,000 sq ft) would not be met (556 additional square feet required). Based on the above, the applicant is requesting to split the subject parcel in half – matching the original lot configurations prior to the 608 & 618 Portage Street parcels being combined in 2014. Each proposed lot is required to have 60 feet in width and 8,000 sq ft in size. As such, the applicant is requesting a variance in lot width and lot size requirements as follows: <ol style="list-style-type: none"> A variance of 18 inches in lot width; and A variance of 278 square feet in lot size. |
|---|---|

8. The Zoning Board of Appeals shall review any variance requests subject to the review standards outlined in Section 23.05 of the City's Zoning Code and Wis. Stats. 62.23(7)(e).

Options for the Board:

1. Deny the area variance request as one or more of the following review standards are not met:
 - a. An unnecessary hardship is present;
 - b. The hardship claimed is due to physical limitations of the property rather than circumstances of the applicant; and
 - c. The variance will not harm the public interest.
2. Approve the area variance request.

Vicinity Map



Background

Overview: The subject property, 618 Portage Street, is split-zoned. The west half of the subject parcel has a “R-4” Multiple Family I Residential zoning designation, while the east half of the subject parcel has a “R-5” Multiple Family II Residential zoning designation. Currently, one duplex and two detached accessory garages (560 square feet and 1,104 square feet) are located on the property. As shown on the property map above, a vacant area exists along the southwest

corner of the subject property. This area of the subject property used to house a triplex structure that was constructed prior to 1939 (exact year of construction is unknown). In 2008, a fire occurred on this triplex structure which resulted in the structure being razed later that year. Please note that while this structure was built as a triplex, archival records indicate that the last use of the structure was that of a two-unit residence.

The triplex that used to be located on the subject parcel had a legal nonconforming designation as a conditional use permit has not been issued by the Common Council for this land use (three-unit structures are a conditional use within both the "R-4" and "R-5" Zoning Districts), along with it failing to meet setback requirements for the aforementioned zoning districts. Typically, nonconforming uses are subject to Section 23.01(20) of the City's Zoning Code as it relates to when a legal nonconforming designation is rescinded. This Section states that nonconforming uses may continue so long as said use does not stop for a period exceeding twelve consecutive months, while minor modifications to nonconforming structures may occur as stated below.

Sec. 23.01(20) Nonconforming Premises.

- a) *Intent. This ordinance and districts therein, or any later amendments may create situations where use of premises and parking, yards, setbacks, heights, lot area, lot width and density previously permitted may become prohibited, regulated or otherwise restricted for the purpose of implementing community plans and development goals. It is the intent of this ordinance to permit the continuance of these nonconforming premises, but not to encourage their survival. Such nonconforming premises are declared by the ordinance to be incompatible with conforming premises in the districts involved.*

Existing Nonconforming Uses. A nonconforming use existing at the time of the adoption or amendment of this ordinance may be continued, but no use on such premises shall be enlarged, increased, extended, reconstructed, resumed, substituted, or altered unless the nonconformity is changed to conforming except as follows:

- 1) *If a nonconforming use is discontinued for a period of less than 12 months, the previous use may be resumed.*
- 2) *Minor modifications on nonconforming uses may be approved by Zoning Administrator such as permitting substitution of a more restricted use; permitting ordinary maintenance repairs such as interior and exterior painting, decorating, paneling, and the replacement of doors, windows, and other nonstructural components; or permitting minor deviations from parking, yard, setback, height, lot width, area or density where there are special circumstances caused by the nonconformity which would deprive the subject property of privileges enjoyed by other property in the vicinity under the same zoning classification. **Minor modifications are permitted only after the Zoning Administrator finds the modifications are not contrary to the public health, safety, or well-being, the modifications are compatible with surrounding uses, the modifications would not injure the neighborhood.***
- 3) *Additions to structures not conforming with floodway standards are permitted provided they will not increase the amount of obstruction to flood flows, are flood-proofed by means other than the use of fill to the floor protection elevation, and would not, over the life of the structure, exceed 50 percent of the present equalized assessment value.*

Before going further, I would like to address the nature of the 'minor modifications' clause above and why that was not invoked for this request. As it relates to density requirements, administrative policy has been to invoke a 2% threshold –

if a proposed land use would fall within 2% of meeting density requirements for the given zoning district, zoning staff would be comfortable to grant an administrative exception. As the applicant is off by 3.48% in meeting lot size requirements, that is above the threshold for me invoking the aforementioned 'minor modifications' clause.

While the above Zoning Code section applies to most nonconforming situations, Wisconsin Statutes does deviate from that if a nonconforming structure is demolished under certain scenarios. Wis. Stats. 61.351(5m) states that nonconforming structures demolished due to a fire after March 2, 2006 are permitted to be rebuilt like-for-like. As will be discussed later in this report, State Statutes do not provide a deadline from when a fire occurred to when a property owner must rebuild a structure to invoke this statute. As the triplex on the subject parcel was razed in 2008 due to a fire, the aforementioned statute would apply. The applicant, who recently purchased the subject parcel, is proposing to rebuild the structure to provide another house on the property.

Section 23.01(f) of the City's Zoning Code states that more than one principal structure may be constructed on one parcel provided that a conditional use permit is reviewed and approved by the Stevens Point Common Council. While the applicant would be permitted to rebuild the razed structure per State Statutes, it would require the need for a conditional use permit to be obtained. In reviewing conditional use permit requests, the Common Council has 14 review standards to consider. One of these review standards are stated as follows:

"That the use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified pursuant to the recommendations of the Plan Commission."

Within both the "R-4" Multiple Family I Residence District and the "R-5" Multiple Family II Residence District, a minimum of 8,000 square feet is required per duplex use. As the subject property is 15,444 square feet in size, it would fail to meet the 16,000 square feet that is needed for the Common Council to determine that this review standard is met. As mentioned earlier in this report, the subject parcel used to be evenly split prior to 2014 – where each primary building was located on their own lot (608 and 618 Portage Street). In 2014, the two parcels were combined and resulted in the split-zoned designation that exists today.

Based on this finding, the applicant elected to pursue an area variance to allow for the reconstruction of this principal structure on the subject property. While the applicant could have asked for an area variance of 544 sq ft to allow for two duplex uses on the subject property, the applicant elected to pursue an area variance for the purpose of splitting the subject property back to its original configuration. Under this scenario, the concept is that it would remove the split-zoned designation of the subject parcel (the west half of the subject parcel would solely be zoned "R-4" Multiple Family I Residential, while the east half of the subject parcel would solely be zoned "R-5" Multiple Family II Residential). Additionally, the interest in pursuing this request is that it would reduce the level of nonconformity that exists with respect to detached accessory structures that are permitted on each lot. 900 square is maximum cumulative size of accessory structures that are permitted on a lot, while the level of nonconformity under this proposed lot split would be reduced from 1,664 sq ft to 1,104 sq ft.

Under the proposed lot split, each lot is required to have a minimum lot width of 60 feet and a minimum lot size of 8,000 square feet. The applicant is requesting that each lot have a width of 58.5 feet and a lot size of 7,722 square feet. As such, this application requests:

- A variance of 18 inches in lot width; and
- A variance of 278 square feet in lot size.

The Zoning Board of Appeals shall have the authority to review and provide judgement on special exceptions (i.e., variances) from the regulations of the Zoning Code in harmony with its general purpose, intent, and in accordance with general or specific rules therein contained. Chapter 23.05 of the City's Zoning Code describes the variance review process.

Ch. 23.05 Board of Appeals

The Board of Appeals shall not permit any change in established flood elevation or profiles; shall not grant flood plain variances for a use that is common to a group of adjacent lots or premises (in such case, the Zoning Ordinance would have to be amended through proper procedures); shall not grant a variance unless it is consistent with the spirit and intent of the ordinance and will not be contrary to the public interest or damaging to the rights of other persons or property values in the area; shall not grant a variance for an action which requires an amendment to the flood plain regulations; shall not grant a variance which would have the effect of allowing or expanding a use or structure which is prohibited in that zoning district; shall not grant a variance for a self-created hardship.

I have reviewed the requested variance subject to the review standards outlined within Wis. Stats. 62.23(7)(e). An analysis of each review standard is found below.

Standards of Review – Variance

1. An unnecessary hardship is present.

Analysis: The applicant stated in their application that an unnecessary hardship exists as it is not possible to reconstruct this two-unit structure due to density restrictions unless the property is divided into two lots.

For an area variance, unnecessary hardship exists only if 1.) the applicant shows that they would have no reasonable use of the property without the variance or 2.) that conforming to the Zoning Code provision(s) in question would render such regulations unnecessarily burdensome.

Findings: In considering area variance requests, the first consideration to be had is if not granting the variance would deprive the applicant of all reasonable uses of the property. As stated earlier, a two-unit residence currently exists on the subject property. If the area variance request is not granted by the Zoning Board of Appeals, the subject parcel may still be utilized as a two-unit residence. As such, it is incorrect to state that not granting this variance would prohibit the applicant from having a reasonable land use on the property.

While the 'depriving the applicant of all reasonable uses of a property' standard has historically been a review standard in considering area variance requests, a second option for meeting this review standard also exists per State Statutes. Under this second option, applicants for a variance are required to prove that conformity to Zoning Code restrictions that are subject to a variance request must be "unnecessarily burdensome." To gauge whether a Zoning Code provision is unnecessarily burdensome, it requires a review of the purpose and intent behind why those regulations are in place to begin with.

Pertaining to the applicant's area variance request, there are several reasons why the City regulates the division of parcels. According to the City's Subdivision Ordinance, the purpose of regulating lot divisions are as follows:

Chapter 20.01: Purpose

These regulations are designed to protect and provide for the public health, safety, and general welfare of the municipality, lessen congestion in the streets and highways; to further the orderly layout and use of land; to secure safety from fire, panic, and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate adequate provisions for transportation, water, sewage, storm drainage, schools, parks, playgrounds and other public requirements; to facilitate the further re-subdivision of larger tracts into smaller parcels of land, to encourage the orderly and beneficial development of the community through appropriate growth management techniques assuring the timing and sequencing of development, to assure proper urban form and open space, to protect environmentally critical areas, to protect areas from premature urban development, to ensure that public facilities and services are available concurrent with development and will have sufficient capacity to serve the proposed subdivision, to provide the most beneficial relationship between the uses of land and buildings and the circulation of traffic throughout the municipality having particular regard to the avoidance of congestion and accommodating anticipated traffic.

Before going further, it is important to address the spectrum that exists behind how one determines if a Zoning Code provision is unnecessarily burdensome or not. Unfortunately, State Statutes does not provide a definition for what is considered unnecessarily burdensome, so a greater responsibility is placed on zoning staff and the Zoning Board of Appeals to clarify and explain the purposes behind the above purpose statement.

As referenced earlier, the applicant is requesting to split the subject parcel back to its original configuration pre-2014. In conversations with Fire Department and Public Works staff, concerns are not raised as it relates to fire dangers for adjacent homes, along with traffic generation and congestion on Portage Street should this lot division be approved. Given the placement of where the former duplex was situated on the subject parcel, it is also my belief that the proposed lot split would not result in an overuse of existing facilities that are located nearby (e.g., parks, schools, water and utility needs), nor will it result in excessive noise and light pollution that will impact adjacent residential uses.

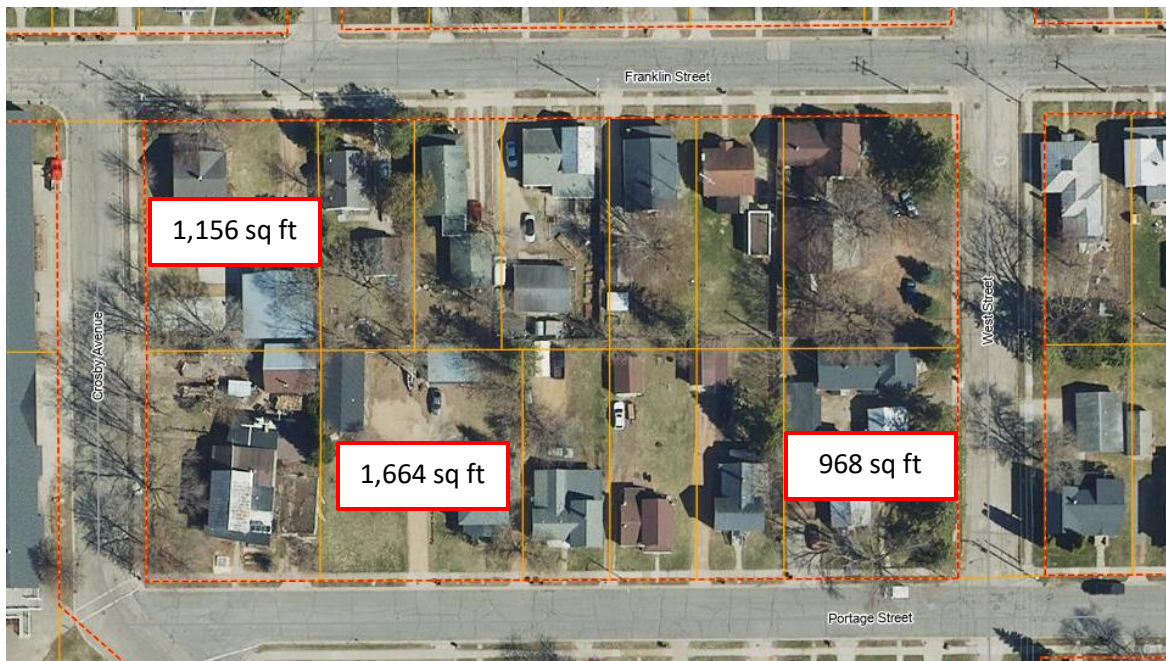
It is important to address again that State Statutes allows this nonconforming structure to be rebuilt. The only reason why this variance is being requested is that a conditional use permit would be needed due to a parcel combination occurring after the fire. If this parcel combination did not take place, this variance would not be needed and the applicant could obtain building permits at any time. Since the two former parcels were combined, the need for a conditional use permit, and the density considerations that the Common Council would be charged to consider, would be necessary. In the absence of a definition for ‘unnecessary burdensome,’ it is my belief that burden would be placed on the applicant if a variance allowing for the reconstruction of this residence would not be granted as the State provides discretion to allow for this through State Statutes.

2. The hardship is due to physical limitations of the property rather than circumstances of the applicant.

Analysis: The applicant highlights the split-zoned designation of the subject parcel, along with the nonconforming accessory buildings located on the property, as exceptional circumstances that are unique to the property.

Findings: Two accessory buildings exist on the property at a cumulative size of 1,664 square feet. According to the City’s Building Code, an unlimited number of accessory buildings can be located on one lot provided that the cumulative size of said structures does not exceed 900 square feet. With the two accessory structures on the subject property, said structures are classified as legal nonconforming. It is my belief that having over 900 square feet of accessory buildings on the subject property is not unique by itself – in fact, a significant number of

properties in Stevens Point exceed this 900 square foot threshold. Taking a look at the City block where the subject parcel is located, the following properties have more than 900 square feet of accessory buildings: 545 Franklin Street and 652 Portage Street.



Properties with More Than 900 Square Feet of Accessory Buildings

To the contrary, it is my belief that the split-zoned nature of the subject property contributes to the ‘unnecessarily burdensome’ review standard mentioned above. In the City, there are approximately 8,924 zoned parcels. Of these 8,924 parcels, 70 are split-zoned. Another way of saying the aforementioned is that 0.0078% of parcels located in Stevens Point have a split-zoned zoning designation.

Some communities allow for the creation of split-zoned parcels and provide clear guidelines within their zoning ordinance as to the administration of split-zoned parcels. Other communities, like Stevens Point, does not allow for the creation of split-zoned parcels and does not provide guidance within its Zoning Code as to administering land use regulations and minimum performance standards (e.g., setbacks, building height, density requirements, etc.) for nonconforming split-zoned parcels. Using the subject property as an example, imagine that the applicant wished to instead construct a single-family home. Within the “R-4” Multiple Family I Residence District, one-unit residences are a permitted use. To the contrary, one-unit residences within the “R-5” Multiple Family II Residence District is a conditional use. As the City’s Zoning Code does not address a situation like this, are single-family residences allowed by right on the subject property? Similarly, the “R-4” District would require 26’ 5” of rear yard setback on the subject property, while the “R-5” District would require only 20’ of rear yard setback. Having differing setback requirements within one lot poses challenges for building construction based on where a structure is placed on a lot.

Section 23.01(20) of the City’s Zoning Code provides a purpose statement for the allowance of nonconforming premises. Said purpose statement is shown below:

Sec. 23.01(20) Nonconforming Premises.

- a) Intent. This ordinance and districts therein, or any later amendments may create situations where use of premises and parking, yards, setbacks, heights, lot area, lot width and density previously permitted may become prohibited, regulated or otherwise restricted for the*

purpose of implementing community plans and development goals. It is the intent of this ordinance to permit the continuance of these nonconforming premises, but not to encourage their survival. Such nonconforming premises are declared by the ordinance to be incompatible with conforming premises in the districts involved.

As identified below, it is important to highlight that the City's Zoning Code allows for the continuation of nonconforming properties. However, the long-term goal is to reduce the number of nonconforming situations that exists – either through ordinance amendments, vacation of nonconforming land uses and buildings, or through special exceptions (e.g., conditional use permits, variances, etc.). Granting an area variance to allow for the removal of this split-zoned parcel, in my opinion, would adhere to the purpose statement of Section 23.01(20) of the City's Zoning Code in better achieving compliance with Zoning Code provisions. Lastly, while the presence of nonconforming accessory structures by itself is not a unique property limitation, it is important to note that the applicant's request would achieve greater compliance with the maximum 900 square feet allowed for accessory structures. Instead of 1,664 square feet of accessory buildings being located on the subject property, the 918 Portage Street parcel would achieve compliance and the 908 Portage Street parcel would achieve more conformity (1,104 square feet of accessory structure size would be provided).

Lastly, I would like to address the fact that the reason this area variance request is being considered is due to a fire resulting in the razing of a former structure that existed on the subject property. Thanks to the great work by the Stevens Point Fire Department and neighboring fire departments, fires that result in the total loss of a residence are rare (on average of one residence every 2-3 years). Had the former structure been razed for a reason other than a fire (e.g., building falling into a state of disrepair), it would be clear that this review standard is not met as any hardship being claimed is self-created (the City's Zoning Code does not permit variances to be granted if the 'ask' stems from a self-created hardship). Since this structure was razed due to a fire resulting in its total loss, along with State Statutes providing exceptions for property owners to rebuild nonconforming structures under these scenarios, it is my belief that the hardship being claimed stems from conditions unique to the property (i.e., loss of a building due to a fire).

3. The variance will not harm the public interest.

Analysis: According to the applicant's application, it is not stated as to if the denial of this variance request would deprive them of rights that are enjoyed by other property owners in similar situations.

Per the City's Zoning Code, the intent of the "R-4" District is *"to provide a medium density, mixed residential district intended to provide a transition between lower density detached housing areas and more intense non-residential land usage consistent with the City's Comprehensive Plan."* The intent of the "R-5" District is *"to provide a mixed-use district of high density living that permits hi-rise housing and also allows a variety of non-residential office-type or professional service uses. It is intended that this district will generally be acceptable as a buffer use between lower density residential uses and commercial industrial uses, and in areas capable of handling higher traffic volumes and areas subject to higher land values than in lower density residential zones with such districts located consistent with the City's Comprehensive Plan."*

Findings: As proposed, both created parcels would be interior lots that abut single- and two-family residential uses in all directions. Overall, it is my belief that the proposed lot split would not harm the public interest. The applicant is requesting to split the subject property back to its original lot configuration pre-2014. While the proposed two-unit residence would be located within the required side yard setback (as allowed per State Statutes), existing landscaping exists along the west lot line to provide an adequate buffer so as to reduce noise and light pollution onto adjacent properties. Additionally, in conversations with the City's Fire Department and

Public Works Department, it was stated that fire threats and traffic generation along Portage Street would not be a concern should the proposed area variance be granted. Lastly, as shown within the agenda packet, a notification letter regarding this Zoning Board of Appeals meeting was sent to all property owners within 200 feet of the subject property (a similar process that is taken for public hearings at a Plan Commission meeting). As of the publishing of the agenda packet on February 15, 2024 no concerns from residents were brought to my attention.

After review, I have determined that 1.) the proposed variance would not harm the public interest. While I recognize the subjectivity that exists in determining if regulations pertaining to lot splits are 'unnecessarily burdensome' to the applicant given the findings of fact presented in this report, it is my belief that statutory provisions regarding fire-damaged nonconforming structures would result in 2.) an unnecessary hardship. Lastly, the reason why an unnecessary hardship exists is 3.) due to unique conditions to the subject property given the loss of a structure due to a fire and its split-zoned designation. Therefore, I would recommend approval of granting an area variance.

The UW-Extension Office has drafted a Zoning Board Handbook which can be reviewed and referenced directly at the following link: https://www.uwsp.edu/cnr-ap/clue/Documents/ZoningHandbook/Zoning_Board_Handbook.pdf.



APPLICATION FOR A ZONING VARIANCE

(Pre-Application Conference Optional)

ADMINISTRATIVE SUMMARY (Staff Use Only)

| | | | | | | | |
|--------------------------------|--|----------------|--|-----------------------|--|----------|--|
| Application # | | Date Submitted | | Fee Required | | Fee Paid | |
| Associated Applications if Any | | | | Assigned Case Manager | | | |

APPLICANT/CONTACT INFORMATION

| APPLICANT INFORMATION | | CONTACT INFORMATION (Same as Applicant? <input type="checkbox"/>) | |
|-----------------------|--|--|--|
| Applicant Name | | Contact Name | |
| Address | | Address | |
| City, State, Zip | | City, State, Zip | |
| Telephone | | Telephone | |
| Fax | | Fax | |
| Email | | Email | |

OWNERSHIP INFORMATION

| PROPERTY OWNER 1 INFORMATION (Same as Applicant? <input type="checkbox"/>) | | PROPERTY OWNER 2 INFORMATION (If Needed) | |
|---|--|--|--|
| Owner's Name | | Owner's Name | |
| Address | | Address | |
| City, State, Zip | | City, State, Zip | |
| Telephone | | Telephone | |
| Fax | | Fax | |
| Email | | Email | |

VARIANCE SUMMARY

| | | |
|--|----------|----------------------------|
| Subject Property Location [Please Include Address and Assessor's Identification Number(s)] | | |
| Parcel 1 | Parcel 2 | Parcel 3 |
| Legal Description of Subject Property | | |
| Designated Future Land Use Category | | Current Use of Property |
| Proposed Use of Property | | Current Zoning District(s) |
| Ordinance Provision(s) from which a variance is requested | | |
| | | |

TYPE OF VARIANCE REQUESTED

| Project (i.e. setback, parking, height, area, etc.) | Required | Proposed |
|---|----------|----------|
| | | |
| <p>List the exceptional and extraordinary circumstances that are peculiar to the land or structure involved which are not applicable to other land or structures in the same zoning district. (use additional pages if necessary for questions below)</p> | | |
| | | |
| <p>List any and all practical difficulties or unnecessary hardships that will result from the exceptional and extraordinary circumstances.</p> | | |
| | | |
| <p>The applicant must prove that the exceptional and extraordinary circumstances do not result from the actions of the applicant. How were the exceptional and extraordinary circumstances created?</p> | | |
| | | |
| <p>List any and all alternatives considered by the applicant and provide evidence as to why they are not feasible.</p> | | |
| | | |
| <p>Would approval of this variance allow the applicant to do something that other property owners in the same situation would not be able to do? If so how?</p> | | |
| | | |
| <p>Would denial of this variance deprive the applicant of rights commonly enjoyed by other property owners in the similar situations? If so how?</p> | | |
| | | |

| Current Zoning Surrounding Subject Property | | | |
|---|--|--------|--|
| North: | | South: | |
| East: | | West: | |
| Current Land Use Surrounding Subject Property | | | |
| North: | | South: | |
| East: | | West: | |

EXHIBITS

| | | |
|---|--------------------------|-----------------------------|
| Owner Information Sheet | <input type="checkbox"/> | Additional Exhibits If Any: |
| Maps (vicinity, zoning, floodplains, wetlands others as requested by staff) | <input type="checkbox"/> | |
| Site Plan (designating primary, side, and service street frontages) | <input type="checkbox"/> | |
| Photos of property, building, etc. | <input type="checkbox"/> | |

CERTIFICATION AND SIGNATURE

By my signature below, I certify that the information contained in this application is true and correct to the best of my knowledge at the time of the application. I acknowledge that I understand and have complied with all of the submittal requirements and procedures and that this application is a complete application submittal. I further understand that an incomplete application submittal may cause my application to be deferred to the next posted deadline date.

| Signature of Applicant | Date | Signature of Property Owner(s) | Date |
|------------------------|------|--------------------------------|------|
| | | | |

From: [SUE MCCARTNEY](#)
To: [District 4](#)
Cc: [Leif Olson](#); [Adam Kuhn](#)
Subject: [External] Application for zoning variance - 618 Portage St
Date: Wednesday, January 3, 2024 3:28:47 PM
Attachments: [Application---Zoning-Board-of-Appeals---Variance.pdf](#)

Ms. Broderick,

This email is to provide an introduction and to notify you of our request for a zoning variance (attached).

My husband, Leif, is a building and remodeling contractor in Oregon, WI. Our daughter, her husband, and our new granddaughter live in Plover. We purchased the 2-flat at 618 Portage with the intention of renting one flat and using the other flat as a second home when we spend time with our granddaughter.

The house needs repairs and updates prior to putting it on the rental market. Leif plans to start with the bathrooms, windows, and any needed plumbing and electrical updates. He also plans rebuilding the front porch.

If we are able to divide the lot, we would like to build a 2 unit house that we could use in the future as we retire and downsize. We envision building an energy efficient house that is handicapped accessible and suitable for "aging in place."

We welcome your feedback and look forward to becoming a part of the community.

Thank you,
Sue McCartney & Leif Olson