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**MEETING OF THE BOARD OF ZONING APPEALS**  
**Thursday, November 17, 2011**

PRESENT: Mr. Randall, Mr. Pennoyer, Mr. Bittner, Mr. Subotich, Ms. Harris,  
Ms. Meyer (Alt.) – 6

ALSO PRESENT: T. Szudy, Planner, Gregg Blando, Building Inspector

Mr. Randall as acting Chair called the meeting to order at 7:04 p.m.

**3720 N. 124<sup>th</sup> Street** **Temporary Use**  
**Request by Stephen Lauenstein for a Temporary Use in the AA Industrial District at 3720 N. 124<sup>th</sup> Street**  
**to allow a personal fitness trainer and nutrition consultant.**

Mr. Lauenstein is requesting a temporary use to operate a personal fitness trainer and nutrition consultant office in a multi tenant building located at the corner of 124<sup>th</sup> Street and Feerick Street. This property is currently zoned AA Industrial District which does not allow physical fitness uses. These uses are allowed, with the appropriate approvals, in areas of the City zoned for business/commercial uses.

The building already houses many traditional business zoned uses and does not lend itself to typical industrial uses. This is the only property along 124<sup>th</sup> Street from Wirth Street to Capitol Drive with this zoning. The other properties are zoned AA Business District. The temporary use is being requested to allow this tenant to occupy the space while a zoning change to AA Business District zoning is pursued by the building owner. This should occur in the next couple months.

The proposed hours of operation are 9 am to 8 pm daily and 3-4 students are expected at a time.

Present in favor: Stephen Lauenstein, 3839 McGrand Blvd, Mequon, WI

No one present in opposition.

Mr. Lauenstein stated that he is the owner of the property located at 3720 N. 124<sup>th</sup> Street. Mr. Lauenstein indicated that this property has previously housed businesses with small offices with warehouse space in the rear and over the years has been converted to mostly office/showrooms with small storage areas in the rear. Potential tenants have approached him to rent this property for retail type businesses. This location is the only property along 124<sup>th</sup> Street from Wirth Street to Capitol Drive with this industrial zoning. Mr. Lauenstein stated that they would be requesting a change in zoning for this location.

Ms. Meyer asked Ms. Szudy if this zoning request was already on the docket. Ms. Szudy replied that it was not, but it will be moving through the process and anticipates if approved, will take up to three months. The zoning change request is an application from the owner.

Ms. Meyer asked if the current tenants are permitted under AA Industrial Zoning. Ms. Szudy indicated that the current tenants' businesses have been approved at this location, however, other tenants that are approaching Mr. Lauenstein are retail based. Mr. Lauenstein indicated that some of the current tenants may be relocating as early as 2012 and tenants that have shown interest in his property are more retail based. Mr. Lauenstein feels that this is a natural progression for his property and prompted him to request the Temporary Use and rezoning.

Mr. Pennoyer asked if there was sufficient parking for this fitness center. Mr. Lauenstein replied yes.

Mr. Randall asked if the proposed tenant has a timeframe to occupy this building. Mr. Lauenstein indicated that the fitness center has signed a five year lease, however, if the Temporary Use is not approved, he will have to cancel the contract. The fitness center is ready to move in immediately.

Mr. Randall asked Ms. Szudy what the plan for the area was. Ms. Szudy commented that it was not originally anticipated to change the zoning of this area, however, the area appears to be transitioning to retail. This property is one of the few industrial properties located on 124<sup>th</sup> Street. Mr. Lauenstein has applied for the rezoning.

Moved by Ms. Meyer, seconded by Mr. Pennoyer regarding the Temporary Use application by Mr. Lauenstein for a personal fitness trainer and nutrition consultant at 3720 N. 124<sup>th</sup> Street for up to one year beginning 11/17/2011 this Board finds:

1. That the establishment, maintenance or operation of the Temporary Use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.
2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the Temporary Use.
3. That the establishment of the Temporary Use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.

Based upon these findings, I move that the Temporary Use be granted for one year effective 11/17/2011, subject to the following conditions:

- A. Hours of Operation  
7 days per week from 9:00 a.m. to 8:00 p.m.

Roll call vote taken: Ayes: 6

**1100 N. 69<sup>th</sup> Street**

**Variance**

**Request by Ernie LaJoice for a Variance to the maximum lot coverage requirements and side yard setback in AA Single Family Residence District at 1100 N. 69<sup>th</sup> Street to construct a detached garage.**

The applicant is requesting three variances to accommodate construction of a two car garage – a variance to the maximum lot coverage, a variance to the maximum accessory structure lot coverage, and a variance to the side yard setback. The proposed garage is 23.67 feet wide by 22.67 feet deep, or 536.6 square feet.

The AA Single Family Residence District has a maximum lot coverage (footprint of house and accessory structures) of 42 percent or 1,516.0 square feet for this lot. With the proposed garage, the overall lot coverage would be 1,566.3 square feet or 43.4 percent. The zoning district also sets an accessory structure lot coverage maximum of 12 percent or 433.2 square feet for this lot. The proposed 536.6 square foot garage covers 14.9 percent of the lot.

Finally, the AA Single Family Residence District requires a setback of 6 feet from the street side property line. The proposed garage is setback 5.49 feet. On the hand drawn site plan submitted by the applicant, the dimensions presented are not accurate as the measurements are taken from the sidewalk not the property line, which is about three feet from the sidewalk. If this is subtracted from the setback shown on the plan, it would appear that the garage will be setback 6.25 feet, meeting the required setback. However, additional calculations determined that the setback would be 5.49 feet. Staff has provided the calculations on the plan for clarification and has illustrated the proposed garage on the survey.

Present in favor: Ernie LaJoice, 1100 N. 69<sup>th</sup> Street, Wauwatosa, WI

No one present in opposition.

Mr. LaJoice stated that he has owned his house since 1961 and the garage is deteriorating. The current garage does not have sufficient space to park his current vehicle and have work space. He has a 96-square foot storage shed which would be removed to create more space for the proposed garage. He is applying for a 536-square foot garage. Mr. LaJoice commented that if you combine the square footage of the current garage with the square footage with the storage shed, it is approximately the same.

Mr. LaJoice provided a letter of support from his next door neighbor. He spoke with most of his neighbors and 15 out of 16 support this. The 16<sup>th</sup> person was unavailable.

Mr. Randall asked Ms. Szudy if his garage is legal non-conforming. Ms. Szudy indicated that his current garage is legal, however, the shed did not need a permit. Only structures over 100 square feet need a permit.

Mr. Randall asked about the setbacks of the current garage and what zoning requires. Ms. Szudy responded that the current setbacks are three feet from the north, four and a half from the east, and six and a half from the south. The required setbacks are 18 inches from the north and east and six feet from the south. The proposed garage would be approximately 5.5 feet from the south. Mr. LaJoice commented that he can remove four inches in the south to accommodate the six foot setback requirement.

Ms. Meyer asked Ms. Szudy in terms of lot size, this is an older district, is this property a smaller lot size. Ms. Szudy responded that the width is smaller. It is atypical for a corner lot as most properties are between 40 feet and 50 feet wide.

Ms. Meyer asked what the typical two-car garage measurement is. Ms. Szudy responded that a typical two-car garage is 24' X 24' and Mr. LaJoice is within this size garage.

Mr. Bittner asked if the current garage and shed cover more than what is allowed on this size lot. Ms. Szudy answered yes. Mr. Bittner commented that the existing garage is four and one half feet off the east setback, the proposed garage will move to within 18” from the lot-line. Mr. LaJoice answered yes.

Mr. Randall asked if this drawing has gone to the Design Review Board. Ms. Szudy responded that it has been approved by the Design Review Board.

Moved Mr. Pennoyer, seconded by Mr. Bittner to approve the variance request to the maximum lot coverage, and a variance to the maximum accessory structure lot coverage this board finds:

1. Exceptional circumstances do exist pertaining to this lot. It is a corner lot; the structure of the home and the size of the size of the lot does prohibit a two car of adequate size to be constructed.
2. That the variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in the district and vicinity. Removing two exterior structures and constructing one structure is positive.
3. That the variance will not create special detriment to adjacent property and will not materially impair or be contrary to the purpose and spirit of this or to the public interests. The proposed structure affects one property and the owner has signed approval.
4. That the difficulty of hardship was not created by the property owner that size and narrow lot makes it difficult to build a usable garage within limitations.

Based upon these findings, I move that the variance be granted.

Roll call vote taken: Ayes: 5

Moved Mr. Pennoyer, seconded by Ms. Harris to deny the variance request to the variance to the side yard setback this board finds:

It is recognized that the applicant for the variance would like to develop his land to the highest and best use and for the greatest economic return. However, it is the finding of this Board that there is nothing unusual or exceptional or extraordinary about the circumstances pertaining to this lot and the owner is able to make reasonable use of the property give the zoning requirements. They are general hardships that zoning imposes generally on all property. There are many uses permitted under the zoning code for which this land can

be used without the need for variance. Four inches is not significant enough difference for building an acceptable size garage and the applicant could meet the required set back of six feet.

Based upon these findings I move that the application for the variance be denied.

Roll call vote taken: Ayes: 5

**11607 West Woodland Avenue**

**Variance**

**Request by Tracy Murray for a Variance to the permitted obstructions in the side yard abutting a street in the AA Single Family Residence District at 11607 West Woodland Avenue for a play structure**

The applicant is requesting a variance to keep the play set/swing set in its current location on her property. Based on a complaint, the Property Maintenance Inspector issued a Notice of Noncompliance to the applicant on October 3, 2011 as zoning restrictions found in Chapter 24.04.110, playhouses are only permitted in rear yards of residential properties if they meet the accessory building setbacks. Unfortunately, the structure is located in the side yard along a street where playhouses are not permitted obstructions. Even though the property is addressed off of Woodland, the front of the lot is considered 116<sup>th</sup> Street per zoning regulations as is the narrowest frontage along a street. However, even if Woodland was considered the front of the lot, the play structure would still not be permitted as it would now be located in the front yard.

Present in favor: Tracy Murray, 11607 West Woodland Avenue

Present in opposition: Alderperson Don Birschel, District 7

Ms. Murray stated that she purchased the property on a foreclosure. The property had some issues that needed to be resolved at the time of purchase. It has taken her one and a half years to prepare the yard to accommodate a play area. The yard had been wet and “spongy”. The back area of the yard remains wet and “boggy” and does not have sufficient room to accommodate the play set.

Ms. Murray explained that the play set was purchased and installed with monies from Milwaukee County to help her autistic child with therapy. The child is seven years old and receives therapy six days a week. Prior to having the play set, she attempted to take her son to the park and experienced inattentive drivers during their walk. They were almost hit by drivers going too fast down Woodland Avenue.

The play set is currently located where she can view her child out a window from the house and has two entrances to the house located near the play set. She supervises her children on the play set, however, if something occurred, and she needed to enter the house for a short period, she could still view the children from the window.

Ms. Murray indicated that she was unable to locate the play set in the back yard as it is still wet and “boggy”. The back yard currently has a cement slab and the hill goes down into their neighbor’s yard. She does not believe she has sufficient space to accommodate the play set and it would be costly to repair the wetness. Even with a smaller play set, the swings when used, would hit her neighbor’s fence.

Alderman Birschel is present in opposition of the variance request. Ald. Birschel commented that Alderperson Berdan was unable to attend the meeting, and he was there on her behalf. Ald. Berdan wrote a letter indicating

that she received complaints regarding the play set. He commented that the roof of the play set was as high as the house. Some of the complaints that they received is that it is much too big.

Mr. Blando, Inspector, received a complaint regarding the play set. Upon his investigation, he discovered that the play set was located on the side of the house. He did speak to his supervisor regarding this issue and called Mr. Birschel to look at it. This resulted in the Notice of Non-Compliance to the applicant. He did receive a call from Ms. Murray and asked her if she could place the play set in the back of the house. Her reply was that there was not sufficient room. Ms. Murray commented that there was previously a shed in the back of the house. The floor of the shed rotted due to the pooling of water in the yard and the shed had to be removed.

Mr. Randall asked if anyone contacted the applicant before the October 3, 2011 Notice of Non-Compliance was issued. Mr. Blando commented that when his office receives a complaint, they only investigate the issue and does not make personal contact. Once the complaint is verified, the notice is sent. Mr. Randall asked if any of the alderpersons reached out to the applicant before the notice was received. Ald. Birschel replied that he does not know if Ald. Berdan contacted the applicant.

Mr. Randall asked if there were sidewalks in the neighborhood. Ms. Murray responded that there were not.

Mr. Randall asked if the play set was located in the back of the house, was there restriction of 18" setback. Ms. Szudy commented that there is nothing regarding maximum lot coverage for a play set. Mr. Blando stated that if the footprint of the play set is in excess of 100 square feet, it needs a permit. He contacted the vendor on this issue and it is not in excess of 100 square feet.

Mr. Randall asked for Ms. Murray to describe how the house is laid out at the back of the house. Ms. Murray responded that the play set is where the kitchen window is and the main door as well as the side door accesses the play set in its current location. In the back of the house, there is a rear door where the cement slab is and then the yard goes downhill into the neighbor's yard, but this too is considered the side yard. What is considered to be the back yard, there is another door, however if the play set would be located here, the door would open into the play set. The children, if they would be on the swings, would hit the neighbor's fence.

Mr. Bittner commented that there is a designation of an overhead utility line in the back yard area where the play set should be going.

Ms. Meyer asked what the specifics were regarding the complaint. Mr. Blando responded that it was the size and violation of code.

Ms. Szudy informed the Board that notices were sent to property owners adjacent to Ms. Murray and across Woodland. No one appeared in opposition. Mr. Pennoyer asked Ms. Murray if she spoke with the neighbors regarding the play set. Ms. Murray responded that she did and did not receive opposition. She was unable to provide signatures.

Ms. Murray explained that because her son is autistic, she or her husband are always outside with the children. Her son has therapy six days during the week, and the therapist has commented that the play set is valuable in teaching her son climbing, pretending, sliding, and many other exercises. The therapist is encouraging an addition of monkey bars to the play set to provide upper body strength. His learning abilities are difficult as an autistic child and this play set has provided huge opportunities for development. The therapist has seen much improvement in her son since the installation of the play set.

Mr. Pennoyer asked if the monkey bars were installed, would the applicant need additional approval. Ms. Szudy urged the Board to clarify this in its motion if approved. Ms. Murray commented that this would provide

exercises in upper body strength for her son which is very important. The monkey bars would go east on the existing structure to match the other side.

Moved Mr. Pennoyer, seconded by Mr. Bittner to approve the variance request keep the play set in its current location this board finds:

1. Exceptional circumstances do exist pertaining to this lot. The only usable area of the lot has drainage problems.
2. That the variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in the district and vicinity. There are no sidewalks or safe access to a public play area.
3. That the variance will not create special detriment to adjacent property and will not materially impair or be contrary to the purpose and spirit of this or to the public interests. Notice has been sent to adjacent property owners, however no opposing neighbors appeared at this meeting.
4. That the difficulty of hardship was not created by the property owner. The home orientation on the corner lot is a non-typical.

Based upon these findings, I move that the variance be granted with the following conditions:

- A. That the play set is limited to five years at its current location.
- B. If the current owners sell the property or moves prior to the 5 year limit, the play set must be removed.
- C. If the owner rebuilds the home, the play set will be relocated to the back yard.
- D. That the extension of the monkey bars do not exceed in length and height of the current structure to the west.

Roll call vote taken: Ayes: 4

No: 1 (Randall)

Meeting adjourned 9:05 p.m.

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Tammy Szudy