



CITY OF WAUWATOSA
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MINUTES
MEETING OF THE BOARD OF ZONING APPEALS
Thursday, January 28, 2016

Attendee Name	Title	Status	Arrived
Peter Subotich	Member	Present	
James Bittner	Board Member	Present	
David Kern	Board Member	Present	
Jamie Kristof	Board Member	Excused	
Brian Randall	Board Member	Present	
Pamela Stokke-Ceci	Board Member	Excused	
Ed Bremberger	Board Member	Present	
Jennifer Ferguson	Planner	Present	

2218 N 117th - Appeal of BPW Decision

Appeals

In response to a neighbor complaint concerning a limousine parked in the front yard driveway at the property, the City's code enforcement officer verified the complaint and sent notice of noncompliance to the property owner. As a commercial vehicle, the outdoor parking of the limousine is in violation of the City's off-street parking code in residential zoning districts (section 24.11.060C). Commercial vehicles must be parked in an enclosed building in a residential district. The property owner was subsequently mailed an application for the Board of Public Works (BPW) to request a variance to code requirement as they are the City body that initially considers such a request.

The Board of Public Works considered the variance request on November 16th and voted unanimously to deny the request. The homeowner is appealing their decision to the Board of Zoning Appeals.

By ordinance, the Board of Zoning Appeals reviews an appeal of a decision of the Board of Public Works as a *de novo* hearing. The *de novo* hearing is a new hearing and therefore, the Board of Zoning Appeals owes no deference to the previous decision and takes on the role of BPW as an independent entity. The Board should create an entirely new motion and either uphold the appeal, or vote to deny the applicant's request. Should the Board uphold the appeal, the applicant could park the commercial vehicle outdoors at the property; however, it would have to park in the rear/side yard as parking is not allowed in the front yard of residential districts. The location of the parking was not part of the initial notice of noncompliance or the applicant's BPW variance request and would necessitate a subsequent appeal.

Present in favor: Joseph Militello, 2218 N. 117th Street, Wauwatosa, WI

Mr. Militello explained that the reason for the complaint was that his neighbor is attempting to sell his house. The neighbor's realtor had commented that the reason the home was not selling was because of the limousine parked in Mr. Militello's driveway. Mr. Militello has had his limousine business at this location since 1998 and has received no complaints.

Mr. Militello is claiming financial hardship in that he is taking care of his elderly mother who resides at the property and he is financially unable to pay to have the limousine parked in another location. He looked into the cost for space in a garage and it will be approximately \$800/mo. Mr. Militello also stated that he is unable to park the limousine in his garage because there is insufficient room to make the turn and he is storing a Rolls Royce in the garage. Mr. Militello commented that he had to file bankruptcy in 2010.

Present in opposition: Kim Nedd, W9147 County Road W, Phillips, WI

Ms. Nedd is the owner of the property, however, her daughter resided at the property next to Mr. Militello. Her daughter purchased another house and has relocated so Mr. and Ms. Nedd decided to sell the property in Wauwatosa. Ms. Nedd stated that there are some repairs that need to be made on the home, however, it has been inspected twice and passed. She had been informed by the real estate agent that potential buyers made comments that they had concerns relating to the limousine parked in the neighbors driveway. The real estate agent was asked to speak to Mr. Militello.

Her daughter did speak to Mr. Militello and asked him to move the limousine but Mr. Militello offered to only move it when the house was being shown. The home is being listed through MLS and there are many individuals showing the home, so this request was not practical.

Mr. Kern commented that on page 9 of the materials it stated in Ordinance 24.11.060 C 1 the purpose of the bar on parking commercial vehicles on a residential property is to "preserve and maintain the esthetic attractiveness of residential neighborhoods" and prevent a vehicle from "detracting from the residential character of the neighborhood." Mr. Kern asked why parking a limousine on the property does not detract from the residential character of the neighborhood or does maintain the esthetic attractiveness of the neighborhood. Mr. Militello responded that he has not received any complaints since he moved there in 1997 and there is not much traffic that goes through the neighborhood.

Mr. Randall asked how he cared for the limousine, how often is it moved, how often is the sedan parked in front, are there other commercial vehicles in the neighborhood. Mr. Militello responded that a person on the corner has a roofing company with a truck and another with a trailer for a lawn care business. He travels to O'Hare Airport many days and weekends he is booked for weddings. The vehicle is washed every-other-day. He has an employee that will come over to pick up the sedan while Mr. Militello drives the limousine.

Mr. Randall asked how many vehicles are parked on the property. Mr. Militello stated that there is a limousine, a sedan and a Rolls Royce that is parked in the garage.

Mr. Subotich asked if the vehicles were registered as commercial and what is the weight of the limousine. Mr. Militello responded that they are all registered as commercial vehicles and the gross weight for the 10 passenger limousine is approximately 3,000 pounds.

Mr. Randall asked if the City has examples of consistent enforcement of this Ordinance. Ms. Ferguson responded that the City has one enforcement officer and he is not able to be all over the city so a complaint would be the normal practice in which this is addressed. There has been several received per year in which the enforcement officer will respond to. Mr. Randall asked what specific

criteria did the applicant violate. Ms. Ferguson answered that it is Ordinance 24.11.060 C.

Mr. Kern commented that there has been City enforcement and the Ordinance is clear.

Mr. Bittner commented that if the limousine was parked in a garage this would be permitted. Does the applicant have sufficient room to build a garage. Mr. Miltello stated that there is not enough room.

Moved by Mr. Kern, seconded by Mr. Bremberger to deny the applicant's request for a variance

- the bar on commercial vehicle parking in residential districts is clear
- there is concern about the preservation and esthetic attractiveness of residential neighborhoods and detracting from the residential character of the neighborhood
- if the Common Council wanted to allow commercial vehicles to be parked in residential neighborhoods, they could so opine

Ayes: 4 Nos: 1 (Subotich)

RESULT:	APPROVED [4 TO 1]
MOVER:	David Kern, Board Member
SECONDER:	Ed Bremberger, Board Member
AYES:	Bittner, Kern, Randall, Bremberger
NAYS:	Subotich
EXCUSED:	Kristof, Stokke-Ceci

Meeting Adjourned at 7:52 PM

Jennifer Ferguson, Secretary