

10639 | CUP 2258



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March 11, 2014

VIA E-MAIL

Zoning & Land Regulation Committee
c/o Roger Lane
Dane County Zoning Administrator
Room 116, City-County Building
210 MLK, Jr. Blvd.

Re: Letter In Opposition to Waubesa Beach Club, LLC's Amended Certified Survey Map to reconfigure 5 existing lots into 2 lots at 2952 and 2948 Waubesa Ave. and Rezone from B-1 Business District and R-3 to Residence District to C-1

Petition: Rezone 10635, Rezone 10639 and CUP 02258

Our File: 19197.71702

Dear Committee Members:

We represent Bruce Lindsay, the owner of the property located at 2946 Waubesa Avenue, Town of Dunn.

Mr. Lindsay objects to rezoning the B-1 Business District and R-3 Residence District to C-1. The requested rezoning goes against the County's historical intent to limit the uses of this property and this area. According to the Staff Report, the petitioner's property was zoned B-1 in 1950 to identify the existing tavern land use. In 1987, Christy's obtained a CUP for one illuminated outdoor volleyball court. In 1992, Dane County changed the land uses listed under the B-1 zoning, which deleted taverns and lighted outdoor activities. This change made Christy's a non-conforming use. The fact that Dane County changed the land uses under B-1 Business Zoning District and deleted outdoor activities within the district establishes the County's intent to limit uses in the area not expand those uses. Petitioner's intent to add a second lighted volleyball court is clearly an expansion of the current use; otherwise the Town would not require so many conditions to reduce the impact on the neighborhood. Christy's expansion goes against the intent of Dane County's current zoning and should be denied.

Mr. Lindsay objects to the granting of a conditional use permit. Petitioner must show that the conditional use of a second lighted volleyball court will not substantially impair the uses, values and enjoyment of other properties in the neighborhood. We have previously submitted to you

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Mr. Lindsay's assessment that showed a substantial decrease and an email from the assessor stating that the assessment was lowered because of Christy's expanded operations. While there may be a dispute as to the amount of the decrease that is attributable to Christy's, the email makes clear that the assessor attributed a portion of the decrease to Christy's. The expansion will likely only further decrease the value.

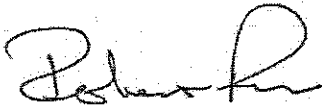
Moreover, the proposed second lighted volleyball court will only be approximately 64 feet from Mr. Lindsay's bedroom window. The use of this volleyball court will increase the noise and light pollution at Mr. Lindsay's property and decrease his use and enjoyment of his home.

Mr. Lindsay opposes the approval of the proposed certified survey map. The reconfigured lots will require a waiver from the minimum lot frontage width and minimum building setback width requirements under the Land Division Regulations. To be eligible for a waiver, the petitioner will need to establish that it will suffer an unnecessary hardship from strict compliance with the regulations. The law is clear that any hardship cannot be self-imposed—i.e. the petitioner cannot establish a "hardship" on the basis that complying with the law will not allow it to expand its operations. Moreover, claiming that the reconfigured lots will bring them closer to being in compliance with the regulations is not a hardship. Finally, loss of profit or other financial hardship does not justify a waiver. All of the requested approvals are in order to allow for a second volleyball court. It is difficult to imagine how the want of a second volleyball court could ever be the basis for determining that a "hardship" exists.

Granting a waiver to the subdivision regulations to allow for the expansion of a tavern to allow a second lighted volleyball court would set a dangerous precedent. For these reasons and the reasons Mr. Lindsay has previously provided in writing and orally, we request that the Planning Commission recommend that the amended CSM petition be denied.

Sincerely,

AXLEY BRYNELSON, LLP



Timothy M. Barber
Robert C. Procter

cc: Mr. Bruce Lindsay