



Dane County

Minutes - Final Unless Amended by Committee

Board of Adjustment

Consider:

Who benefits? Who is burdened?

Who does not have a voice at the table?

How can policymakers mitigate unintended consequences?

Thursday, May 23, 2019

6:30 PM

Room #357 in the City-County Building, 210 Martin
Luther King, Jr. Blvd., Madison, Wisconsin

Room #357 in the City-County Building, 210 Martin Luther King, Jr. Blvd., Madison,
Wisconsin

A. Call To Order

Chair Schulz called the meeting to order at 6:30 PM and made a statement regarding the rules and procedures of the Board.

Also Present: Staff: Roger Lane, Zoning Administrator; Hans Hilbert, Assistant Zoning Administrator.

Present 4 - Chair STEVEN SCHULZ, SUE STUDZ, Secretary ROBERT PULVERMACHER, and Vice Chair AL LONG

B. Public Comment for any Item not listed on the Agenda

No public comments were made.

C. Consideration of Minutes

1. [2019](#) Minutes of the April 17, 2019 Public Hearing
[MIN-043](#)

Sponsors: Board of Adjustment

Attachments: [4-17-2019 PH Minutes](#)

STUDZ/PULVERMACHER to approve the minutes. Motion carried.

Ayes: 4 - SCHULZ, STUDZ, PULVERMACHER and LONG

D. Public Hearing for Appeals

1. [2019 BOA-001](#) Appeal 3696. Appeal by the Village of DeForest (Allen Reuter, agent) for a variance from maximum allowable height of a structure permitted within the Dane County Regional Airport Height Limitation Zone as provided by Section 78.03, Dane County Code of Ordinances, to allow existing communications equipment atop water tower to remain in place at 4209 Anderson Rd being Lot 1, CSM 7441 in the NW 1/4 SW 1/4, Section 9, Town of Burke.

Sponsors: Board of Adjustment

Attachments: [05-23-2019 BOA Staff Report](#)
[Appeal 3696 application](#)
[4.12.19 FAA Determination Letter](#)
[Timeline](#)
[DCPVAR-0000-02428](#)
[DCPCUP-0000-01426](#)
[CUP 2032](#)
[DCPCUP-2018-02450 app](#)
[CUP 2450](#)

Assistant Zoning Administrator (AZA) Hilbert presented a Staff Report reporting facts of the case.

IN FAVOR: Allen Reuter, representing the Village of DeForest, spoke in favor of the variance request. Maureen McCarville spoke in favor of granting the variance to improve public safety communications. Peter Shall, Verizon Wireless, spoke in support of the variance and was available if the Board had any technical questions regarding the equipment.

ZONING ADMINISTRATOR'S COMMENTS: Zoning Administrator Roger Lane stated that the zoning ordinance requires colocation of antennas and that the granting of this variance will not undermine the spirit of the ordinance.

OPPOSED: [None. The Chair stated no rebuttal was needed.]

Finding of Fact:

Existing:

- Water tower with communication equipment, allowed by conditional use permit, mounted atop located within the airport height limitation zone of the Dane County regional airport. Additional communication equipment has been mounted on the tower which was not permitted by the conditional use permit which has resulted in a zoning violation.*

Proposed

- In an effort to correct the zoning violation the applicant has applied for a new conditional use permit to allow the new communication equipment to remain on the tower. This equipment exceeds the airport height limitation and can only be permitted if a variance is granted. The Dane County Zoning and Land Regulation committee has postponed action on the conditional use permit request until such a time that the Board of Adjustment grants or denies the variance request.*

Zoning Notes:

- Applicant requested that the public hearing be deferred until such a time that the FAA completed the aeronautical study. When the study was completed the request was placed on the next available public hearing.

History

- 1993, Variance 2428 granted 61 feet of relief from the AHLZ to allow the construction of a water tower.
- 1997, CUP 1426 granted for 4 communication towers atop existing water tower.
- 2001, Zoning permit issued for colocation of communication equipment.
- 2007, CUP 2032 granted amending CUP 1426 for number and location of communication equipment allowed on the water tower.
- 2012, Zoning permit to allow 3 new antennas to be placed on the water tower.
- 2015, Zoning permit to allow new antenna on tower and equipment building on site.
- 2018, CUP 2450 application submitted to amend conditions of CUP 2032.

COMMUNICATIONS:

Town of Burke: 11/20/2018 acknowledgement of variance, no action or comments submitted.

Dane County Regional Airport: 4/19/2019, no objection provided the variance is granted with the following condition:

“Applicant shall comply with all requirements, conditions and recommendations set forth in the Federal Aviation Administration’s Determination of No Hazard to Air Navigation related to Aeronautical Study No. 2019-AGL-1242-OE and dated April 12, 2019, or any modifications thereto approved by the FAA or required by law.”

Federal Aviation Administration: 4/12/2019 Aeronautical study.

Conclusions:

- 1) *Unnecessary Hardship: The Board found that not allowing the use of existing infrastructure would be unnecessarily burdensome to permit additional communication antennas in the area.*
- 2) *Unique Limitations of the Property: The existing water tower was constructed in a location necessary to serve customers of the utility and will remain in this location. This location has previously been used for the purpose of colocation of communication equipment which limits the number of other towers that may be necessary within the AHLZ.*
- 3) *No Harm to Public Interests: The structure as existing and proposed has been found by the FAA to be of no-hazard to air navigation if the conditions of the aeronautical study are implemented.*
- 4) *Alternatives: Alternatives would either create additional structures within the AHLZ or not function correctly for the purposes of radio communication.*

STUDZ/LONG to approve a variance of 76 feet from the maximum height of a structure in the airport height limitation zone to allow the placement of existing and future communication equipment and safety rail on the existing water tower with a condition requiring that the applicant shall comply with all requirements, conditions and recommendations set forth in the Federal Aviation Administration’s Determination of No Hazard to Air Navigation related to Aeronautical Study No. 2019-AGL-1242-OE and dated April 12, 2019, or any modifications thereto approved by the FAA or required by law.”

Ayes: 4 - SCHULZ, STUDZ, PULVERMACHER and LONG

2. [2019 BOA-002](#) Appeal 3699. Administrative appeal by Yahara Materials, Inc., Hoepker, LLC & Highway 51, LLC (Attorneys Eric McLeod & Samantha Schacht, agents) appealing a determination of the Zoning Administrator related to land use approvals for the Hoepker quarry at 4261 Hoepker Rd being lands in Section 17, Town of Burke.

Sponsors: Board of Adjustment

Attachments: [Appeal 3699 Appellant Brief](#)
[Appeal 3699 ZA Brief](#)

The chair opened the public hearing for administrative appeal 3699 and made a statement regarding the proceedings.

Eric McLeod, representing the appellant, provided an opening statement.

Roger Lane, Zoning Administrator, provided an opening statement.

McLeod presented the appellant's case. McLeod called Tim Gegagan, Yahara Materials, as a witness. Gegagan was sworn in and answered questions. The Zoning Administrator cross examined the witness.

The Zoning Administrator was sworn in and presented a case to the Board. Following questions of the Board the Chair stated that the Board would recess for 10 minutes to allow a break.

The Board reconvened and McLeod cross examined the Zoning Administrator.

Gegagan offered a rebuttal as the appellant.

McLeod presented a closing statement to the Board.

Lane presented a closing statement to the Board.

After requesting any additional statements Chair Schulz closed the hearing and the Board deliberated the appeal.

LONG/PULVERMACHER motion to table the appeal until June 27, 2019 to allow the Board to review additional information related to the 2009 conditional use permit. Motion carried.

Ayes: 4 - SCHULZ, STUDZ, PULVERMACHER and LONG

E. Appeals from Previous Meetings

1. [2019
ACT-022](#) Written decision of Appeal 3697-A

Sponsors: Board of Adjustment

Attachments: [Decision of appeal 3697-A](#)

LONG/STUDZ to approve the written decision and file it in the Planning and Development Department. Motion Carried.

Ayes: 3 - SCHULZ, STUDZ and LONG

Abstain: 1 - PULVERMACHER

F. Reports to Committee

G. Other Business Authorized by Law

H. Adjournment

STUDZ/SCHULZ to adjourn. The board adjourned at 10:35 by voice vote.