



Dane County

Minutes - Final Unless Amended by Committee

Board of Adjustment

Thursday, September 11, 2014

6:30 PM Room 357, City-County Building, 210 Martin Luther King, Jr.
Boulevard, Madison, WI.

Room 357, City-County Building, 210 Martin Luther King, Jr. Boulevard, Madison, WI.

A. Call To Order

Chair Schulz called the meeting to order at 6:30 p.m. in Room 357 of the City-County Building and made an announcement regarding rules and procedures followed by the Board.

Present 5 - Chair STEVEN SCHULZ, Vice Chair SUE STUDZ, MARY HALEY, ROBERT PULVERMACHER, and ARLAN KAY

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

Chair Schulz offered an opportunity for public comment on general items not included on the current agenda. There were no registrants for public comment.

C. Consideration of Minutes

1. [2014 MIN-274](#) Minutes of the July 24, 2014 Public Hearing

Sponsors: Board of Adjustment

Attachments: [07-24-2014 P.H. Minutes.pdf](#)

A motion was made by HALEY, seconded by STUDZ, that the Minutes be approved. The motion carried.

Ayes: 4 - SCHULZ, STUDZ, HALEY and PULVERMACHER

Abstain: 1 - KAY

D. Public Hearing for Appeals

1. [2014 BOA-004](#) Appeal 3658. Administrative Appeal by the Town of Madison and Henry & Susan Bassett and William & Renee West (John M. Gerlach & Richard K. Nordeng, agents) for an appeal of a Zoning Administrator decision regarding the permitted use of a day resource center in a C-1 Commercial Zoning District proposed at 1490 Martin Street being Lot 3, Fraust Plat, Section 34, Town of Madison.

Sponsors: Board of Adjustment

Attachments: [Administrative appeal 3658 application letter](#)
[Appeal 3658 Town of Madison Brief.pdf](#)
[Appeal 3658 ZA Brief.pdf](#)

Chair Schulz opened the public hearing.

Appearing for the Appellant:

John Gerlach, LaRowe Gerlach Taggart LLP, representing the appellant.

Appearing for the Zoning Administrator:

David Gault, Dane County Corporation Counsel, representing the Zoning Administrator.

Appellant's opening statement:

Mr. Gerlach made an opening statement to the Board stating that the board should make consideration that the Zoning Administrator's interpretation was incorrect and that a day resource center is a government use.

Zoning Administrator's opening statement:

Mr. Gault made an opening statement to the Board stating that the Zoning Administrator correctly interpreted the zoning code.

Opening statements of other interested parties:

No other interested parties came forward to make an opening statement.

Applicant's case-in-chief:

Mr. Gerlach called Hans Hilbert, Assistant Zoning Administrator, as his first witness. Hilbert was sworn in by Chair Schulz. Mr. Hilbert responded to questions on his letter dated June 24, 2014. Hilbert was cross-examined by Mr. Gault. The Board asked questions of Mr. Hilbert.

Mr. Gerlach called Travis Myren, Dane County Director of Administration, as his second witness. Myren was sworn in by Chair Schulz. Myren responded to questions regarding the County's involvement in the proposed Day Resource Center. Myren was cross-examined by Mr. Gault.

The Chair called for a 10 minute recess. The Board recessed and reconvened.

Mr. Gerlach called Rick Rose, Director of Public Works, Town of Madison, as his third witness. Rose was sworn in by Chair Schulz. Mr. Rose responded to questions about his role at the Town of Madison and gave testimony reflecting his disagreement with the interpretation of the Zoning Administrator. Mr. Rose was cross-examined by Mr. Gault. The Board asked questions of Mr. Rose.

Mr. Gerlach called William West as his fourth witness. West was sworn in by Chair Schulz. Mr. West responded to questions about being a neighbor of the proposed day resource center and resident of the Town of Madison, and gave testimony reflecting concern regarding the interpretation of the Zoning Administrator. Chair Schulz allowed Mr. West to address the Board with additional statements.

□ Mr. Gerlach requested of the Chair to accept the binder of evidence provided to the Board Members, containing 20 documents used in the questioning of witnesses, to be entered into the record. The Chair stated that the Board did not have time to review the entirety of the documents but would place the documents into the record.

Zoning Administrator's case-in-chief:

□ Mr. Gault informed the Board he felt the facts of the case had been adequately presented during the appellants case-in-chief and cross-examination and that he had no other witnesses or evidence to present.

Statements of opinion of neighbors or abutting land owners:

The following property owners registered and spoke in support of the appellant:

- Henry Bassett, 2030 Irwin Place, Madison, WI.
- Joan Camp, 1501 Martin St #3, Madison, WI.
- Gary Davis, 2018 Dickson Place, Madison, WI.

Rebuttal by appellant:

The Chair allowed Mr. Gerlach to call Mr. Hilbert back for further examination. Hilbert responded to further questioning. Mr. Gault was allowed cross-examination.

The following property owners registered in support of the appellant:

- William West 2013 Irwin Pl, Madison, WI.
- Tara Cordes 2037 Field St, Madison, WI.
- Jim Campbell 3404 Nottingham Way, Madison, WI.
- Renee West 2013 Irwin Pl, Madison, WI.
- Myrna Larson 2621 Marshall Pkwy, Madison, WI.
- Rindert Kiemel 2769 Marshall Pkwy, Madison, WI.
- Carol Kiemel 2769 Marshall Pkwy, Madison, WI.
- William Elkington 1606 Martin St, Madison, WI.
- Dale Cox 1045 Ridgewood Way, Madison, WI.
- Nancy Gores 2034 Frazer Pl, Madison, WI.
- Albert Stenner 1505 Carver St, Madison, WI.
- Beth Stenner 1505 Carver St, Madison, WI.
- James Woods 2018 Dickson Pl, Madison, WI.
- Charles James Mitchell 2542 Marshall Pkwy, Madison, WI.
- Bill Hantke 2635 Arboretum Dr, Madison, WI.

Closing statement of Appellant:

Mr. Gerlach, representing the appellant, provided his closing statement.

Closing statement of the Zoning Administrator:

Mr. Gault, representing the Zoning Administrator, provided his closing statement.

Closing of Public Hearing:

Chair Schulz closed the Public Hearing on Administrative Appeal 3658.

Board Discussion and Action:

Having heard the testimony and considered the evidence presented, the Board determines the facts of this case to be:

Filing Date: July 21, 2014.

*Meeting notice published: August 29 & September 4, 2014, Wisconsin State Journal.
Affidavit of publication/posting is on file.*

Hearing Date: September 11, 2014.

Appellant: Town of Madison, Henry & Susan Bassett, and William & Renee West (John M. Gerlach & Richard K. Nordeng, agents). Larowe Gerlach Taggart LLP, 1730 Community Dr, PO Box 10, Sauk City, WI 53583.

A. The appellant is an interested party of the following described property which is the subject of the appeal: 1490 Martin Street being Lot 3, Fraust Plat, Section 34, Town of Madison, Dane County.

B. The property is presently in use as a Hospitality House resource center operated by Porchlight Inc.

C. The Dane County Department of Administration has requested the Zoning Administrator to determine if a day resource center is a permitted use in the C-1 Commercial Zoning District.

D. Dane County proposes purchasing the property to be leased to Shine 608 which will operate a Day Resource Center, expanding the services currently provided by Porchlight Inc.

E. In a letter dated June 24, 2014, The Zoning Administrator has determined that a day resource center is a permitted use in the C-1 Commercial Zoning District.

F. The appellant requests an appeal of the Zoning Administrator's determination regarding the permitted use of a day resource center in the C-1 Commercial Zoning District under section 10.13(1)(a) of the Dane County Code of Ordinances.

Conclusions of Law:

Based on the above findings of fact the Board concludes that:

The zoning administrator's interpretation of Section 10.13(1)(a) of the zoning code is a correct interpretation because:

- The Zoning Administrator followed the proper procedures in defining a day resource center as a service use, and such a use is a permitted use in the C-1 Commercial district.*
- The appellant did not provide sufficient evidence to support that the day resource center should be classified as a governmental use rather than a service use as determined by the Zoning Administrator.*
- Ownership of a property does not define the use of the property.*
- The purpose statement of the LC-1 Limited Commercial Zoning District implies that commercial uses are not inherently retail in nature.*
- A use which is not explicitly defined does not deem it a prohibited use.*
- The day resource use is similar to other services permitted and provided in the C-1 Commercial zoning district.*
- The board must make their decision based on the language of the zoning code, not how the outcome of their decision may affect interested parties.*
- The zoning code definition of a government use does not include a listing of government services, however lists uses which are typically owned and operated by a*

government.

On the basis of the above findings of fact, conclusions of law and the record in this matter the board affirms the Zoning Administrator's interpretation of the zoning code.

Schulz/Studz To uphold the decision of the Zoning Administrator.

Ayes: 5 - SCHULZ, STUDZ, HALEY, PULVERMACHER and KAY

G. Other Business Authorized by Law

The Board discussed the meeting schedule for the month of October. The board concurred to hold the meetings as presented on the 2014 meeting schedule.

H. Adjournment

Schulz/Pulvermacher Motion to adjourn. The Board adjourned at 10:45 pm.