The meeting of the Board of Zoning Appeals was called to order at 6:30 p.m. on Monday, February 16, 2015. It was noted that the meeting had been announced and posted at City Hall.

Roll call was taken, with the following members present: Craig Breitsprecher, Brent Larson, Ald. Harvey Bertrand (alternate), Ald. Bob Muth

Also Present: City Clerk Cari Burmaster, Planner/Zoning Inspector Katie Meyer

Excused Absence: Bob Wehrenberg

Item 2 – Approval of minutes from previous meeting

Motion by Craig, second by Brent, to approve the minutes from the previous meeting as printed and on file in the City Clerk's Office.

On voice vote, motion carried.

Consideration and possible action on the following items:

Item 3 – Public Hearing approximately 6:30 p.m. – Request for variance filed by Woodman's Food Market, Inc., 2631 Liberty Lane, Janesville, WI 53545 for the purpose of a variance to waive the 100-foot minimum setback from an intersection and to exceed the maximum sign square footage of 60 square feet for a two-tenant monument sign with one off-premise tenant at Woodman's Food Market, 9515 State Road 16, Onalaska, WI 54650 (Parcel #18-3625-0)

Ald. Muth reviewed the Order of Business for Public Hearing per Development Review Procedures Appeal, Section 13-8-42 (g), Order of Business:

General Hearing:

- Statement of the nature of the case by the chairperson (Ald. Muth).
- Appellate side of the case (Applicant).
- Questions from the Board of Zoning Appeals members.
- Land Use and Development Director's side (Katie).
- Questions from the Board of Zoning Appeals members.
- Statements from interested persons such as neighbors or abutting land owners.
- Questions from the Board of Zoning Appeals members.
- Appellate rebuttal.

Ald. Muth invited the applicant to approach the microphone.

Marc Johnson
5324 North 134th Avenue
Omaha, Nebraska

"What we're asking is for the sign in front of the Woodman's gas station to be allowed to have a monument there and include an Arby's sign pointing to the address of the location that we're interested in purchasing and building on. Right now that location, as far as our research goes, is just a little bit out of sight, out of mind. In our industry that's just not a good combination. We have been looking in the area for a very long time and have actually looked at this site several times, and every time kind of deductively decided it's just not front and center like we would like to see it. About a year ago we started working with a developer that was going to put a strip center in that location and we were going to occupy the end cap of that strip center. We got a long way down the road with that individual and then they basically withdrew from the seller, stating that they couldn't get any interest in the rest of the bays beside us. Then the sellers, Woodman's, came to us and asked, 'Would you be interested in purchasing the property?' We [responded that] it's a lot of money and it's kind of off to the side. The only way we could probably really do this is if we could get signage that towered up around 75 feet to catch the interstate. In getting together with some of the staff, I [said] I don't think we're going to get above 45 feet. We said we really to find a way to try to help this site out if we're going to put the kind of investment into the community that it would take. We began talking with the Woodman's group and saying we could replace your gas marquee by putting a nice, new modern sign up for you and putting a small Arby's sign there with an arrow. They were very favorable about it. We started talking about easements, and then we said we'd better find out from the city if it's plausible. In getting together with Katie and Brea [Land Use and Development Director Brea Grace], we came to the conclusion that it would be considered an off-premise sign and would require a variance. That's why we're here right now. It's not about trying to improve the income of the property. It's trying to ensure that the property is visible, and that's the difficulty that we have with that property. It's just not in a really front-and-center area.

We want to be a part of the community. We want to be a contributing member, not only in serving great food but also in serving the community through volunteer work with our team. We're very big on that, and [we want to get] a lot fundraisers going with the high schools and the churches. We do that all across our company, and we do it very successfully. We're interested in being here. We've been looking for a long time, and we think we can make this site work. But it definitely … For the amount of money that is invested in doing this, it has to be visible. I think that would solve this situation."

Ald. Muth invited questions from board members.

Ald. Bertrand asked Katie to address the regulatory aspect of the signage; specifically, how it fits into the city's code.

Katie said this portion of the meeting is to ask the applicant questions.

Craig told Marc he is familiar with Arby's basic sign packages, both on the building as well as freestanding signage. Craig asked Marc if he is anticipating that the site, in addition to the directional sign for which he is seeking a variance this evening, will have more than one freestanding sign on the site itself. Craig asked if one sign might face the off-ramp and if one might be located along the street frontage.

Marc said he favors having as much signage as is allowed and stated, "I think when we originally looked at the signage near the on-ramp, you just can't see it unless we were able to get up about 75 feet. I don't know if that would be efficient use of our funds. I do think that out on the corner at the front of the restaurant we would do a monument-type sign out there for sure."

Ald. Bertrand asked Marc if the visibility of a sign from Interstate 90 is imperative to the success of the restaurant.

Marc said, "Certainly the visibility to this site from the interstate is not that good. You can see it when you're about on the bridge, but it's too late. You would have to go down the road, turn around and come back. Obviously when you come down I-90, you see the Baymont [Inn] and you see the Microtel. They're all visible signs. You can see the Home Depot sign. They're right out along the interstate. Those are all directing traffic off that interstate. Again, if I could get something up really high to communicate to that interstate, we would. We have a lot of stores on Interstate 90, and it's a very strong interstate in our company across Wisconsin. Our business is not really a destination business; it's an impulse business. While some people might say, 'Let's go to Arby's,' others are just coming off that interstate or driving and they go where they see, so you want to be seen. Other than anything we can get on those billboards out on the interstate, it's not a real highly visible site from the interstate."

As there were no further questions from board members, Ald. Muth invited Katie to make her presentation.

Katie said the property in question is the Woodman's parcel, which has an existing freestanding sign located on the northwest corner of the property. Currently the sign advertises for Woodman's gas station. The property owner [Woodman's] is proposing a shared monument sign that would advertise the gas station and the car wash, in addition to a sign directional in nature toward Arby's. Katie said the total sign is proposed to be 156.85 square feet per side. The Arby's restaurant is located within approximately 350 feet of the proposed sign location on Woodman's property. Katie noted that there are two variances being requested from specific sections of the Zoning Code. The first is that the off-premise sign must be a minimum of 100 feet from an intersection. The second is that if the distance between freestanding signs is less than 200 feet the sign has to be a monument sign, a maximum height of 15 feet and a total of 60

square feet per side in area. Katie said the applicant is asking to reduce the 100-foot minimum distance from an intersection, and also to exceed the 60 square-foot per side requirement. Katie said the Comprehensive Plan identifies this parcel and area as Commercial in nature, to be utilized for retail, business, or restaurant and that this is an area variance.

Katie addressed the following criteria set forth in Section 13-8-44 as follows:

1. Some sort of hardship to the property owner (or intended use) due to physiographical consideration.

Katie said staff believes that the criteria for Variance Request No. 1 (off-premise sign within 100 feet of intersection) has been met. Katie noted that the Arby's parcel is a second-tier outlot that lacks adequate visibility from the nearby area due to its distance from State Trunk Highway 16, which is approximately 420 linear feet. Katie said the applicant noted that without off-premise signage, the restaurant would be at a disadvantage compared to other restaurants located along STH 16 that have visibility from this corridor. Katie said the applicant states that the proposed location and size of the off-premise sign will alleviate visibility concerns and inform travelers along STH 16 of the restaurant's presence and directions to its location. Visual barriers to the proposed Arby's site include adjacent hotels, the Wisconsin Department of Motor Vehicles facility, and tree vegetation. Katie said the location of the proposed joint sign is set back 24 feet from South Kinney Coulee Road, and approximately 62 feet from STH 16. Katie noted that due to the large preserved right of way at the intersection of STH 16 and South Kinney Coulee Road, the 100-foot setback would cause the proposed sign to be located in an area occupied by the existing car wash. The proposed location of the sign is located outside the vision triangle and should not cause negative visual or safety impacts at the intersection of STH 16 and South Kinney Coulee Road.

Katie said staff also believes that the criteria for Variance Request No. 2 (freestanding sign exceed 60 square feet per side) has been met. Katie said the purpose of limiting the square footage allotment of freestanding signs within 200 feet along a frontage is to prevent congestion and maintain traffic visibility. The Wisconsin DMV facility sign is located in the southwestern corner of the intersection of STH 16 and South Kinney Coulee Road. The approximate distance between the existing DMV sign and the proposed sign location is 135 feet. The sign locations are separated by a signalized intersection. Katie said that as vehicles will be governed by the signal, staff believes that traffic visibility will not be impaired if the joint sign exceeds the 60 square-foot per side limitation. Additionally, the square foot requested is reasonable as it would adequately display the message.

2. Uniqueness of the situation.

Katie said staff believes that the criteria for Variance Request No. 1 has been met. Katie said that to the best of staff's knowledge, there are no other off-premise signs located along STH 16.

Katie noted that staff had researched other restaurants and similar businesses along STH 16 and discovered that all but two have frontage along the highway. The two restaurants that do not have direct frontage off STH 16 either have signage on the highway or are easily visible. Katie said that while the proposed Arby's location has frontage on three sides, staff believes that passersby will have more difficulty in viewing the restaurant from STH 16 and the westbound off-ramp from Interstate 90 due to the location of the adjacent hotels, the Wisconsin DMV facility and vegetation along the off-ramp.

Katie said staff also believes that the criteria for Variance Request No. 2 has been met. Katie noted that the joint sign is intended to serve both Arby's and Woodman's. The existing sign on Woodman's property is the only sign that provides this information (gasoline prices) on site and is allowed to have up to 300 square feet per side as an on-premise sign. Katie noted that by the sign code, Woodman's could construct a second monument sign, but this sign would be required to be at least 100 feet east of the current sign. If the proposed sign only displayed Arby's (up to 60 square feet) and the second sign to the east displayed gasoline prices, the effectiveness of the sign would be questionable because the gas prices and car wash prices would not be easily visible to passersby along STH 16. Woodman's is proposing a 98.67 square-foot sign, and Arby's is proposing a 58.18 square-foot sign that contains the Arby's hat and arrow. A portion of the 58.18 square-foot sign is the arrow that would direct traffic to the restaurant. Katie said that due to State of Wisconsin requirements that require gas prices easily visible from streets and the directional nature of the Arby's sign to overcome the challenges previously noted, staff believes this criteria has been met.

3. Whether or not the variation is based exclusively upon a desire to increase value or income potential.

Katie said staff believes the criteria has been met for both Variance Request No. 1 and Variance Request No. 2. Katie said staff believes that the request is not solely based on income potential of the proposed Arby's due to previously discussed issues such as visibility and the need for directional signage. The proposed sign for Arby's is less than 60 square feet, and a portion of that square footage includes the arrow illustrating the directional nature of the sign. Also, considering the requirements by the State of Wisconsin regarding posting gas station prices and that Woodman's could install its proposed portion of the sign without a variance, staff believes this criteria has been met.

4. Detrimental to Public Welfare or injurious to other property owners.

Katie said staff believes that the criteria for Variance Request No. 1 has been met due to the expansive right of way adjacent to the Woodman's property. Katie said staff also believes that the criteria for Variance Request No. 2 has been met as Woodman's could currently construct a sign up to 300 square feet per side and the proposed overall square footage of the joint sign is 156.85 square feet per side.

5. Purpose of the variation would not undermine the spirit of the Zoning Code.

Katie said staff believes the criteria has been met for both Variance Request No. 1 and Variance Request No. 2 as the development upholds legislative purpose and intent of the Zoning Code Sections 13-1-6 (c) and (h).

Katie said staff recommends approval of the proposed variance as it is believed that all five criteria have been met. Katie said staff also recommends the following conditions of approval:

- Variance applies to any future owner of Tax Parcel #18-3625-7 (proposed Arby's site) provided the approved square footage for the entire sign is not exceeded. A sign permit will be required from the city for future re-facing or any change-outs to the sign. Any minor modifications to the sign to be approved by staff through a sign permit. Any major modifications to be approved by the Board of Zoning Appeals.
- Provide a signed, recorded copy of freestanding sign easement to the Planning & Zoning Department.
- Obtain sign permit for the proposed sign.
- Any omissions of any conditions not listed shall not release the property owner/developer from abiding by the city's Unified Development Code requirements.
- All conditions run with the land and are binding upon the property owner and all heirs, successors, and assigns. The sale or transfer of all or any portion of the property does not relieve the original property owner from meeting any conditions.

Katie invited input from board members.

Ald. Bertrand asked if there is any opposition to the variance application.

Katie said staff has not been contacted by anyone either for or against the variance application.

Ald. Bertrand asked Katie if there are any subjective issues that concern her.

Katie said no, noting that both she and Brea had examined the code as well as much of the development that currently exists along STH 16. Katie noted that the code had changed several times from the late 1990s into the early 2000s and said she and Brea had attempted to be as comprehensive in their review as possible.

Craig noted that another entity [near the Arby's site] had brought an application before the Board of Zoning Appeals in 2012. Craig also noted that this entity had made a request similar to the one before the board this evening and said that particular request had been approved.

Ald. Bertrand asked if granting this variance would be inconsistent with any past issues with businesses located along STH 16.

Katie said she does not believe this would be the case, especially since the majority of businesses along STH 16 either have direct frontage off the highway or are located within 300 foot of STH 16. Katie said she attempted to find lots that were placed in the same general way in terms of being set back from STH 16 and their visibility. Katie also noted that the proposed [Arby's] sign is less than 60 square feet and is directional in nature, with the goal being to direct customers to the site.

Ald. Bertrand asked if granting this variance will set a precedent for any future issues that might arise.

Katie said no and noted that variances are not precedent in nature.

Craig noted that statute prohibits the consideration of one variance as a type of guarantee that a similar type variance would be granted.

Ald. Muth opened the public hearing and called for anyone wishing to speak in support of the requested variance.

Ruth Barch
123 Carol Lane
Onalaska

"I think the sign idea is a great idea because no matter which direction you come from, you can't see that place at all unless you go into the DMV or Woodman's. You need the sign, because I love Arby's."

Ald. Muth called three times for anyone else wishing to speak in support of the requested variance and closed that portion of the public hearing.

Ald. Muth called three times for anyone wishing to speak in opposition to the requested variance and closed the public hearing.

Ald. Muth welcomed questions from the board members.

As there were no questions from board members, Ald. Muth welcomed Marc to comment.

Marc said he appreciated the opportunity to bring this variance request before the board as well as both Katie and Brea's efforts during the process. Marc reiterated that Arby's is looking forward to serving the community in many facets and stated, "We really look forward to the idea

of being here. We've been looking in Onalaska for a long time. There are a lot of areas in this community that we think we could build restaurants, but we really think the foundation has to start out on [STH 16]. You have a very successful area along Highway 16 and Interstate 90. Obviously when everything is going well and everybody is doing well it's hard to find anything front and center. We do think we can make this site work with a little help."

Ald. Muth referenced Section 13-8-43, "Decision and Disposition of Cases – Item D: Vote Required," and read the following: *"All orders or decisions of the Board of Appeals granting a variance, exception or conditional use, or reversing any action or order of the administrator require the affirmative vote of four members."*

Ald. Muth read Section 13-8-44, Section E:

"Action of the board of appeals standards, for the board to grant a variance, it must find that:

1. Denial of variance may result in hardship to the property owner due to physiographical consideration. There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel structure use or intended use that do not apply generally to other properties or uses in the same district. The granting of the variance would not be of so general or recurrent nature as to suggest that the zoning code should be changed.

2. The conditions upon which a petition for a variation is based are unique to the property for which variation is being sought and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties of the same district and same vicinity.

3. The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.

4. The granting of the variation will not be detrimental to the public welfare or injurious to the other property or improvements to the neighborhood in which the property is located.

5. A proposed variation will not undermine the spirit and general and specific purposes of the zoning code, specifically the standards of Section 13-1-6."

Motion by Ald. Bertrand, second by Craig to approve with the five conditions listed a request for the two variances filed by Woodman's Food Market, Inc., 2631 Liberty Lane, Janesville, WI 53545 for the purpose of a variance to waive the 100-foot minimum setback from an intersection and to exceed the maximum sign square footage of 60 square feet for a two-tenant monument sign with one off-premise tenant at Woodman's Food Market, 9515 State Road 16, Onalaska, WI 54650.

On roll call vote: Ald. Bob Muth – aye, Ald. Harvey Bertrand – aye, Craig Breitsprecher – aye, Brent Larson – aye. Motion carried unanimously.

Item 4 – Consideration and Approval of 2015 Board of Zoning Appeals Meeting Schedule

Motion by Brent, second by Craig, to approve the 2015 Board of Zoning Appeals Meeting Schedule.

On voice vote, motion carried.

Adjournment

Motion by Brent, second by Craig, to adjourn at 7:10 p.m.

On voice vote, motion carried.

Recorded by:

Kirk Bey